

# DEPARTMENT POLICY

<b>POLICY # 305</b>	<b>SUBJECT:</b> Conditions of Continued Employment – Standards of Conduct
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<b>AUTHORIZED SIGNATURE:</b>	

## CONDITIONS OF CONTINUED EMPLOYMENT STANDARDS OF CONDUCT

### I BACKGROUND

The Department of Services for Children, Youth and Their Families recognizes the value of having high ethical standards, which guide the conduct of its employees. Department representatives are public servants charged with ensuring public respect and confidence while promoting the values and mission of the Department. Employees should maintain a high standard of personal conduct on the job and when identifying themselves as representatives of the agency. Personal feelings and values should be respected as long as they do not impact the employee's ability to do the job.

As adopted from the State of Delaware Beliefs and Principles and reiterated by the Department, achieving excellence in human relations is simply *a matter of respect* for individuals regardless of age, color, disability, ethnicity, gender, nationality, race, religion, and sexual orientation. Behaviors which demean or offend people are not acceptable and will not be tolerated. These include, but are not limited to:

- Slurs or jokes that reflect negatively on any group or individual;
- Harassment in any form (including sexual harassment), in accordance with the State's harassment policy;
- Displays of pictures, posters, calendars, flyers, or other material that denigrates (belittles/ridicules) or shows hostility or aversion (dislike) towards another individual or group.

The Department, as chief advocate for and a provider of care to the youth of Delaware must ensure the safety of such youth utilizing an array of interactive policies and procedures. As such, in the area of employment, the Department requires and initiates a criminal history check and a review of the Child Protection Registry (formerly the Child Abuse Registry) on prospective employees prior to employment or during a conditional period of employment. New employees must disclose all criminal history and/or child abuse/neglect substantiations, if any, and must be determined suitable for employment or continued employment by the Department through criminal history and Child Protection Registry checks. Over the past several years, changes in statutes and procedures have led to the need to establish a policy to ensure that safety is addressed on an ongoing basis.

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## **II PURPOSE**

This policy focuses upon an aspect of employee conduct directly related to the safety of the children/youth in our care. Such consideration is paramount as the Department carries out its mission to provide leadership and advocacy for Delaware's children.

The purpose of this policy is to affirm the commitment of the Department of Services for Children, Youth and Their Families to the protection of children/youth in our care by providing a uniform standard of guidance and expectations to Departmental managers and employees relative to criminal convictions and child abuse/neglect substantiations subsequent to an employee's initial hire and by setting forth guidelines for employee conduct. This policy is applicable to all Departmental employees including contracted staff, casual/seasonal personnel and volunteers. Subsequent reference to the term employee in this policy shall be inclusive of these categories.

## **III POLICY**

With the effective date of this policy, the Department shall undertake a process to update criminal history and Child Protection Registry records of current staff to ensure that the appropriate fingerprints are on file and that there have been no undisclosed subsequent offenses or abuse/neglect substantiations that could jeopardize the safety of our youth. Prospectively, the Department's Criminal History Unit will receive SARs (Subsequent Arrest Reports) from the Delaware Criminal Justice Information System (DELJIS) and the Division of Family Services, Office of Children's Services will notify the Criminal History Unit when an employee is being investigated for child abuse/neglect subsequent to the initial hiring check. Said findings will be reviewed in the context of this policy and the applicable statutes and regulations. This policy is to memorialize the ongoing intent and integrity of the statutes related to subsequent offenses during the course of employment, and the effect, if any, on continued employment.

The Department is responsible for ensuring the safety of children/youth under its care. As such, the Department also has the responsibility to ensure that no employee will be retained if he/she poses a potential for risk or harm to children/youth.

### **A. APPLICABLE STATUTES/ENFORCEABILITY**

Chapter 3, Title 31, Section 309 of the Delaware Code requires a check of SBI and FBI records and a review of the State's Child Protection Registry be conducted on employees or volunteers of the Department who have regular direct access to children at a residential child care facility operated by the Department or its contractors as defined by the law and who were hired after September 1, 1989. Delaware Regulations for Criminal History Records Checks apply Chapter 3, Title 31, Section 309 to all Departmental employees hired on or after September 1, 1989. The checks are completed by the Criminal History Unit prior to

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employment or during a conditional period of employment. Based on established criteria, the Criminal History Unit makes a recommendation to the respective Division Director as to whether or not an employee or prospective employee is “suitable,” “unsuitable” or “prohibited” from employment. The regulations for conducting criminal background checks and a listing of offenses that prohibit employment with the Department and/or child care facilities and those that are discretionary are outlined in the Delacare Regulations for Criminal History Record Checks.

Chapter 9, Title 16 of the Delaware Code applies to acts of child abuse/neglect that are alleged to have occurred on or after February 1, 2003. The Levels determine the length of time an individual is reported out to potential employers as being on Registry and whether or not an individual is eligible for employment within a Departmental licensed facility, health care facility or public school as defined by Title 11, Chapter 85.

***Child Protection Registry Levels***

Level I	Not reported out to employers/potential employers as being on the Registry.
Level II	Reported out for 3 years; is eligible for employment in a childcare facility, health care facility or public school.
Level III	Reported out for 7 years; is not eligible for employment in a childcare facility, health care facility or public school while on Registry.
Level IV	Reported out forever; is not eligible for employment in a childcare facility, health care facility or public school while on Registry unless ordered for removal by Family Court.

The Department is of the belief that all Departmental employees including contracted staff, casual/seasonal personnel and volunteers could potentially have direct access to the youth we serve. Level II, III and IV substantiations carry with them the legal presumption that the person substantiated is respectively, a moderate, high, or highest risk of future harm to children. As a consequence, and a matter of policy, the Department has adopted the tenets of these statutes (Chapter 3, Title 31, Section 309 and Chapter 9, Title 16) and has extended their applicability to include all Departmental employees including contracted staff, casual/seasonal personnel and volunteers. Additionally the Department has adopted the policy that any employee, contracted staff, casual/seasonal personnel or volunteer who have been substantiated for abuse or neglect will be reviewed consistent with the aforementioned Child Protection Registry Levels.

**B. UPDATING HISTORY**

Consistent with the intent and effective date of this policy and within the limits of the applicable statutes, the Department’s Criminal History Unit will obtain updated criminal history information on current employees who have not had

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Criminal Background or Child Abuse Registry checks. Employees who may have had pre-existing offenses previously undisclosed or misrepresented to the Department, i.e., a criminal conviction or child abuse/neglect substantiation, will have a determination of suitability for employment made on a case-by-case basis. The Criminal History Unit will advise the respective Division Director as to their recommendation regarding whether an employee is “suitable,” “unsuitable” or “prohibited” from continued employment based on the applicable statutes, regulations and Department policy.

If the offense is not a prohibited offense under the Delacare Regulations, the Criminal History Unit will be guided primarily by the Child Protection Registry Levels in substantiations of child abuse/neglect. For non-prohibited criminal offenses the Criminal History Unit will utilize the Criminal History Unit Decision Making Protocols in formulating a suitability/unsuitability recommendation

Division Directors, in consultation with Departmental Human Resources, will make final suitability/unsuitability determinations by utilizing the following criteria:

- The Recommendation of the Criminal History Unit
- Job Relatedness and Job Assignment
- Severity of the offense(s)
- Nature of the offense(s)
- Frequency of the offenses; interval between offenses
- Length of time since the offense(s)
- Age at the time of the offense(s)
- Employment record
- Policies of the Department

If there is an unsuitability determination, the Division Director in conjunction with Departmental Human Resources will formulate the necessary course of action utilizing applicable Merit Rules, Collective Bargaining Agreements and the due process requirements.

If as a result of a prohibited offense or unsuitability determination or a substantiation of child abuse/neglect determination, a recommendation for termination is warranted, the employee will immediately be removed from having direct contact with children and/or restricted to no unsupervised contact with children while the employee is offered a pre-decision meeting. A representative of the Criminal History Unit may be called upon as a witness in any subsequent adversarial proceedings.

### **C. SUBSEQUENT OFFENSES**

Consistent with the intent and effective date of this policy, any criminal arrest or charge levied against a departmental employee which is subsequent to any criminal history check, shall be received by the Criminal History Unit as

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previously described. Additionally the Office of Children's Services within the Division of Family Services will notify the Criminal History Unit when a Department employee is being investigated for alleged child abuse/neglect. The Criminal History Unit shall share this information with the appropriate Division Director and Departmental Human Resources. The information will include the specifics of the arrest/allegation of abuse/neglect including:

Arrests	Allegations of Neglect/Abuse
<ul style="list-style-type: none"> <li>• Date of arrest</li> <li>• Charges</li> <li>• Arraignment date if known</li> <li>• Other pertinent information related to the charges</li> </ul>	<ul style="list-style-type: none"> <li>• Date of complaint</li> <li>• Age of child</li> <li>• Relationship of child</li> <li>• Other pertinent information related to the incident/complaint</li> </ul>

The Supervisor/Manager shall meet with the employee to discuss the specifics of the charges and report to the Division Director and Departmental Human Resources. If the charge could result in a prohibited offense, a determination of unsuitability, or a substantiation of child abuse/neglect, the employee may be prohibited from having contact with children and/or restricted to no unsupervised contact with children. This could result in a temporary change of work location. Based on the charge(s) and the employee's explanation of the events that led to the charges, immediate removal from the work place could result.

Upon adjudication of a criminal offense or of child abuse/neglect, the Criminal History Unit will advise the respective Division Director as to its recommendation regarding the employee's suitability for continued employment based on the applicable statutes, regulations and Department policy.

If the offense is not a prohibited offense under the Delacare Regulations, the Criminal History Unit will be guided primarily by the Child Protection Registry Levels in substantiations of child abuse/neglect. For non-prohibited criminal offenses the Criminal History Unit will utilize the Criminal History Unit Decision Making Protocols in formulating a suitability/unsuitability recommendation.

Division Directors, in consultation with Departmental Human Resources, will make final suitability/unsuitability determinations by utilizing the following criteria:

- The Recommendation of the Criminal History Unit
- Job Relatedness and Job Assignment
- Severity of the offense(s)
- Nature of the offense(s)
- Frequency of the offences; interval between offenses
- Length of time since the offense(s)
- Age at the time of the offense(s)
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If there is an unsuitability determination, the Division Director in conjunction with Departmental Human Resources will formulate the necessary course of action utilizing applicable Merit Rules, Collective Bargaining Agreements and due process requirements.

If as a result of a prohibited offense, unsuitability determination or a substantiation of child abuse/neglect determination, a recommendation for termination is warranted, the employee may be immediately removed from having direct contact with children and/or restricted to no unsupervised contact with children while the employee is offered a pre-decision meeting. A representative of the Criminal History Unit may be called upon as a witness in any subsequent adversarial proceedings.

Any employee substantiated for abuse/neglect against a child subsequent to any criminal history check resulting in a Level III or Level IV placement on the Child Protection Registry shall be prohibited from continuing employment with the Department.

Any employee who is being investigated for abuse/neglect against a child may immediately be removed from having direct and/or unsupervised contact with children. If the findings of the investigation are unsubstantiated or substantiated at Level I or Level II, the employee may be returned to his/her function without restrictions unless criminal charges are pending in which case such employee may be removed from the workplace or transferred/restricted to no unsupervised contact with children.

If the findings of the investigation are an intent to substantiate at Level III or Level IV, the employee may be removed from the workplace or transferred from direct contact with children pending results of the substantiation hearing. This could result in a temporary change of work location. If the employee is substantiated at Level III or IV, termination proceedings will ensue. If the child abuse/neglect substantiation is overturned or the level reduced to a Level I or Level II, the employee may be returned to duty and made whole, if applicable.

#### **D. CRIMINAL CHARGES/WORKPLACE RELATED ACTIVITY**

When an employee has been charged with criminal misconduct as a result of activity related to the workplace, there shall be an administrative investigation conducted by the Manager/Supervisor to determine whether the conduct meets the just cause standard for discipline. Such investigation shall be separate and detached from the criminal proceeding, for as an employer, we must focus on the workplace and related conduct, not the resulting criminal charges. The decision to discipline must be based on the outcome of the administrative investigation and

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be separate from the criminal charges since the standard of proof to establish just cause is lower than the criminal standard for conviction.

#### **E. EMPLOYEE RESPONSIBILITIES**

Employees of the Department have certain responsibilities to assure the safety of children and be positive role models for Delaware's children. As such, Department employees must:

- Be free from criminal activity or involvement in substantiated cases of abuse/neglect that may lead to harm of any child/youth.
- Maintain a high standard of personal conduct both on the job and when identifying themselves as a representatives of the agency.

Each employee shall have an affirmative duty to immediately inform their Supervisor/Manager of any criminal convictions, arrests, investigations or indictment of themselves or of any investigation of child abuse/neglect or entry onto the Child Abuse Protection Registry subsequent to initial employment. Failure to immediately notify their Supervisor/Manager of any of the above, including final disposition, could result in discipline, up to and including termination.

#### **F. MANAGEMENT RESPONSIBILITIES**

Department management also has responsibilities regarding implementation of this policy. They are:

- To ensure that there is no discrimination in personnel actions because of characteristics of race, color, religion, national or ethnic origin, sexual orientation, age, gender, physical handicap or political belief.
- To ensure that employees have the right of due process.
- To ensure equal enforcement of all employment/personnel practices.
- To ensure adherence to the Merit Rules and Collective Bargaining Agreements.

#### **G. CONFIDENTIALITY**

The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment and/or continued employment and will further ensure confidentiality of all files of criminal history checks and child protection registry checks.